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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 12

Application Number: 09/654,444
Filing Date: September 01, 2000
Appellant(s): BRENNAN ET AL.

James K. Weixel

For Appellant

EXAMINER'S ANSWER

(1) Real Party in Interest

This is in response to the appeal brief filed 1/27/03.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is deficient because:

Appellant has reversed the description of InterLATA and IntraLATA calls/carriers. When an originating and terminating LATA are the same, an IntraLATA call is made because the call remains in the same LATA, hence "Intra" as opposed to "Inter." On the other hand when calls are made that span different LATAs, i.e., when the originating and terminating LATAs are different, the call is an InterLATA call.

(6) Issues

The appellant's statement of the issues in the brief is correct. However, the issues regarding claims 11 and 24 are now moot because they are now considered allowable by examiner.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1 - 24 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,205,214	CULLI ET AL.	3-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1 – 10 and 12 - 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culli et al.

1. Regarding claims 1, 9, 10, 12, and 20 – 22, of which claim 1 is the representative claim, Culli et al. teach a local routing system and method implemented in an AIN environment that can also handle Intra-LATA, Inter-LATA, as well as calls involving interexchange carriers, international calls, etc., wherein after a call is originated, determining whether a called party is inside a local calling scope of the calling party. (Col. 2, lines 43 – 50, Col. 13, lines 45 – 50). Depending on whether the called party is in the calling scope of the calling party and what the originating and terminating LATAs

are, selecting appropriate carriers for the call, whether the call is deemed to be a local call, Intra-LATA call, or Inter-LATA call. Col. 2, lines 51 – 60, Col. 5, lines 17 – 36). If the call is deemed to be local and in the same calling scope, one local carrier (e.g. Verizon) will be chosen. (See example on page 9 of this Examiner's Answer.) If the call is an Intra-LATA call, a second carrier (e.g. GTE) will inherently or at the least, obviously be chosen as in the case of a local long distance call, wherein two separate providers (e.g. Verizon and GTE) may service one LATA. If the call is an Inter-LATA call, a third carrier (e.g. AT&T) will inherently or at the least obviously be chosen as in the case of a conventional long distance call, wherein the originating and terminating LATAs are different as well as the local and long distance carriers. (Figs. 1, 2, 4, 5, 7 – 9, Col. 2, line 17 – Col. 3, line 47, Col. 5, line 17 – Col. 6, line 46, Col. 7, lines 37 – 64, Col. 9, line 53 – Col. 15, line 13, Col. 17, line 12 – Col. 24, line 48).

Note though, that while claim 1 states the selection of a carrier type occurs at the LEC level, this has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Regarding the preamble limitation "... selecting a carrier type for routing a call for AIN-based customers of the LEC," Culli et al. teach an "apparatus and method for a

local routing system enabling a local exchange carrier (LEC) to route network traffic according to a local service provider's preferences. (Col. 1, lines 21 – 23, see also Col. 5, lines 59 – 61 of Culli et al.)

Culli et al. does not explicitly teach the use of three carriers because it is possible in Culli et al. that, for example, local calls and Intra-LATA calls may be routed using the same carrier. However, since telephone companies have been allowed by the FCC for years to provide Intra-LATA calls, it would have been obvious that an Intra-LATA call may be routed over a carrier other than the local carrier. The example given by examiner on page 9 explains the possibility of using three different carriers for the three different types of calls.

With regard to claim 9, keys or shortened Ids and the like are well known in the art and while Culli et al. does not specifically make mention of LATA keys, Culli et al. does make mention of routing Ids and various other keys relating to the system used for locating or accessing various data tables as is very well known in the art, and it could be considered to be inherent or at the very least, obvious to one of ordinary skill in the art to use keys in the invention of Culli et al. (Col. 9, lines 53 – 61, Col. 13, line 23 – Col. 14, line 67).

2. Regarding claims 2 – 6, 13 – 17, and 23, of which claim 2 is representative of the group, Culli et al. teach a routing system including a determiner (Col. 2, lines 36 – 38), a router (Col. 2, lines 39 – 42), and a filter (Col. 2, lines 43 – 50), wherein the filter analyzes LATAs and calling and called party numbers to determine local calling scope.

Furthermore, the determiner is used to determine the routing preferences for the originating switch. (Col. 2, line 31 – Col. 3, line 56, Col. 12, line 45 – Col. 15, line 65).

What Culli et al. does not explicitly teach is the use of originating and terminating rate centers, wherein a terminating rate center is searched for in an originating rate center table when determining whether a called party is inside the local calling scope of a calling party. However, Culli et al. teach creating originating access billing records and terminating access billing records. (Col. 2, line 1 – Col. 3, line 3, Col. 6, lines 34 – 46). Furthermore, originating and terminating rate centers and their respective tables are old and well known as well as commonplace in telephony systems. It is also old and well known that originating rate center tables point to or are linked to terminating rate center tables so that the routing and rates of calls can be determined. Therefore, if not inherent, it would be obvious for one of ordinary skill in the art to have used originating and terminating tables in Culli et al. to determine routing and rates for various calls.

Furthermore, with regard to claim 5, Culli et al. only mentions the use of NPA-NXX combinations. (Col. 22, line 8 – Col. 23, line 65).

However, as mentioned in the specification of the present invention, NPA-NXX-X combinations may need to be considered in the case of 1K pooling. (P. 8, line 5 of the specification of the present invention).

To integrate this feature into the invention of Culli et al. would simply be an obvious extension of function to include various types of calling/called numbers for

which there is overwhelming motivation in the present state of the telecommunications arts.

3. Regarding claims 7 and 18, when a caller party is within the local calling scope of the calling party, this inherently means that the originating rate center is the same as the terminating rate center, i.e., the claimed limitation, "when said terminating rate center is found in an originating rate center table for said originating rate center." Inasmuch as Culli et al. has already been shown above to inherently or obviously include the use of originating and terminating rate tables, the limitations of claims 7 and 18 are read upon by the system of Culli et al.

4. Regarding claims 8 and 19, originating and terminating rate centers have already been discussed above. Furthermore, Culli et al. teach the use of customized calling plans which is read as the claimed "extended dial plan" to affect call routing. Because each switch in the system may have its own routing preferences according to these calling plans, the plans must first be checked to make sure that the switch does not have a preference for routing the call from the originating switch to a different terminating switch. (Col. 7, lines 37 – 46, Col. 9, line 53 – Col. 10, line 13, Col. 13, lines 45 – 50, Col. 18, line 48 – Col. 19, line 50)

5. Claims 11 and 24 are allowed by the examiner.

(11) Response to Argument

For clarification of the art and technology at issue, an Inter-LATA call is that is placed within one LATA and received in a different LATA. These calls are currently carried by a long distance company. (Newton's Telecom Dictionary, p. 428) An IntraLATA describes calls that originate and terminate in the same LATA. This can be either Interstate or Intrastate service. (Newton's Telecom Dictionary, p. 437)

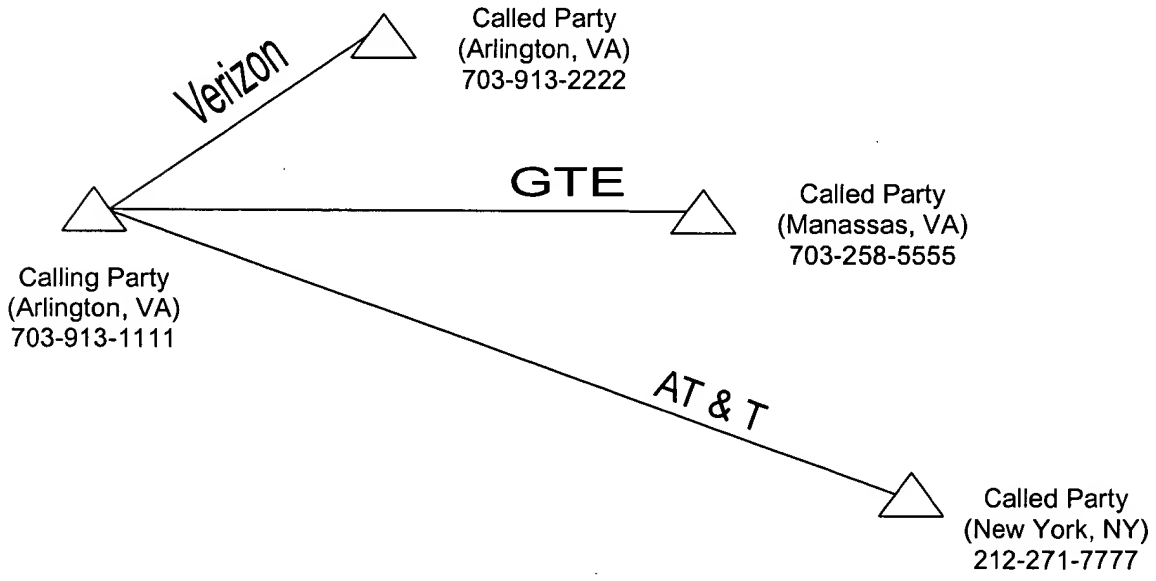
1. As to Appellant's argument regarding claim 1 discussed in section A of Appellant's appeal brief, please see Col. 5, lines 17 – 37 of Culli et al., wherein it is stated that while a preferred embodiment of the invention can route local telephone traffic:

"[O]f course, the system is not limited to such types of traffic because any type of network traffic can be routed according to a service provider's preferences. For example, the system can be modified to handle interexchange carrier traffic... Also, intra-LATA traffic can be routed, etc."

This means the system of Culli et al. contemplates usage in local traffic (in or out of a local calling scope), Intra-LATA traffic, as well as Inter-LATA traffic. See also, Col. 5, line 66 – Col. 6, line 5 which teaches that the system of Culli et al. can be implemented to handle traffic other than local traffic which includes, Intra-LATA, Inter-LATA, and inter-exchange traffic

As to how this applies to claim 1 of the present invention, a scenario can be described as such: A calling party having telephone number 703-913-1111 located in

Arlington, VA makes a call to a party having telephone number 703-913-2222, also in Arlington, VA. This will be a local call carried by Verizon, read as the claimed "first carrier." If that calling party makes a call to a telephone number in Manassas, VA such as 703-258-5555 served by GTE, this would be an Intra-LATA call and will be routed by GTE, read as the claimed "second carrier." If that calling party calls a telephone number in New York, NY such as 212-271-7777 served by AT&T, this would be an Inter-LATA call and will be routed by AT&T, read as the claimed "third carrier." See figure below.



Hence, Culli et al. does in fact teach all the limitations of claim 1.

2. As to Appellant's second issue addressed in section A of Appellant's appeal brief, Examiner maintains his assertion that "there is no criticality of the claimed order either in the claims or in the specification..." This assertion is maintained because while the order of checking NPANXXs and LATAs may be different in the present invention and the system of Culli et al., the end result would be the same. Applicant admits that this "could" be the case. However, their point of argument rests on their assertion that the order of this method implemented in the present invention "may" also result in a different result.

Assuming arguendo, that this is the case, Appellant still has no basis for patentability. While the system of Culli et al. checks whether the destination NPANXX is within the local calling scope of the originator after it is determined that the LATAs are identical and the present invention determines whether a called party is inside a local calling scope of a calling party, and then compares the originating and terminating LATAs, either method has its pros and cons, both giving ample motivation for one of ordinary skill in the art to choose either method. (Note that a 35 USC 103 rejection was given by Examiner.) For example, Culli et al. arguably was motivated by the fact that choosing their method of Appellant's method avoids the additional processing power and processing time (that would be necessary to implement Appellant's method) by first checking the LATAs and if they are not identical, not having to check each and every

number in the originating and terminating sequence of the respective NPANXXs. However, this does not mean that the method employed by Appellant's invention was not contemplated and furthermore, the method employed by the present invention is obvious in lieu of the teachings of Culli et al.

Therefore, the invention of Culli et al. does not in fact teach away from the present invention, nor is there merit in Appellant's argument that Examiner ignored the terms and limitations in claim 1.

Also, one reading of claim 1 is that, according to the order of steps, it is determined whether a called party is inside a local calling scope of a calling party and thereafter, a first carrier is chosen. Appellant merely "assumes" that when the LATAs are checked in Culli et al., that they have already been chosen to complete the call. However, all that is done by Culli et al. is just to "compare" the LATAs, not select them, because as will be seen and discussed later, with regard to other claims, the customized calling plans of Culli et al. teach that merely because the originating and terminating LATAs are the same, does not necessarily mean that a certain LATA will be chosen because calling plans for each switch in the system may override such a standard routing scheme. (Col. 2, lines 58 – 60)

3. As to Appellant's third issue discussed in section A of Appellant's appeal brief, please see the above argument regarding the choosing of a first, second, or third carrier.

4. As to Appellant's argument regarding claims 2 – 6, 13 – 17, and 23 discussed in section B of Appellant's appeal brief, it was addressed above that the invention of Culli et al. contemplates the choosing of carriers wherein those carriers may be Verizon, AT&T, and MCI. It is known that different service providers have different rates that are charged for calls made on their different systems depending on where and how the call is to be routed and completed. If one merely inquires as to why there is a difference between a local call and a local long distance call, the reason given would be that sometimes different service providers are being accessed, an originating provider, for example, Verizon, and a terminating provider, for example, AT&T. Also, the very reason that some telephone networks have a distinction between local calls (within the 703 area code for example) and local long distance calls (still within the 703 area code) is a result of differing rates charged for calls even when the calls fall under the same area code.

Moreover, it is old and well known in the art that terminating rate centers and originating rate centers are usually if not exclusively implemented, therefore obvious if not inherent, in the form of tables and databases wherein depending on a preference for routing of calls that are known to span more than one service provider or even within a service provider's coverage area, databases or tables are structured in such a way that originating rate tables are linked or point to various terminating rate tables and the associated rates. This is done in some cases so that service providers can give lowest possible rates for certain calls. In other cases, this is done so that rates for routing calls can simply be known.

This is further taught by Culli et al. in Col. 2, lines 31 – 42 and lines 51 - 60, and Col. 3, lines 27 – 47, wherein the invention of Culli et al. teaches a "determiner that determines the routing preference for each switch serving the originator" and "routing includes routing traffic to the destination according to the local service provider's routing preference..."

See also Col. 6, lines 14 – 15 wherein it is stated that routing preferences are determined by a "table lookup" and Col. 7, lines 41 – 42, wherein it is taught that the invention of Culli et al. teach the consideration of originating and terminating billing.

Therefore, Appellant's assertion that the rejection of claim 2 is improper and should be reserved has no merit and the rejection made by Examiner can be maintained.

5. As to Appellant's argument regarding claims 7 and 18 discussed in section C of Appellant's appeal brief, see Examiner's above argument regarding claim 2.

The issues regarding claim 18 are now moot because they are considered allowable by the examiner.

6. As to Appellant's argument regarding claims 8 and 19 discussed in section D of Appellant's appeal brief, see Examiner's above arguments regarding claims 2 and 7.

Furthermore, see Col. 7, line 56 – Col. 8, line 14, wherein it is discussed that the invention of Culli et al. contemplates various "customized calling plans," read as the claimed "extended dial plan," which "invoke" LRS on calls to other stations within the

same Centrex." Because the language of Culli et al. reads that "customized calling plans" "invoke" certain actions this reads on the limitation in claims 8 and 19 that recite "when said terminating rate center is found in an originating rate center table of said originating rate center and an extended dial plan requirement indicated..." This is because claims 8 and 19 also recite that certain actions are taken as a result of finding an extended dial plan in the originating rate table, or in the terms used by Culli et al., customized calling plans found in the routing preferences of each switch, which is discussed above with regards to claim 2 and section B of Appellant's appeal brief. The issues regarding claim 19 are now moot because they are considered allowable by the examiner.

7. As to Applicant's argument regarding claims 11 and 24 in section E of Appellant's appeal brief, the issue is moot because these claims are considered allowable by the examiner.

8. For the above reasons, it is believed that the rejections of claims 1 – 10 and 12 - 23 should be sustained.

Respectfully submitted,

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April 7, 2003

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